

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RICHARD ROSEN,

Plaintiff,

v.

TMS, INC. d/b/a SUPPORT PLUS
MEDICAL and WARREN K.
TROWBRIDGE, As President of TMS, Inc.
and Individually,

Defendants.

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Civil Action No. 09-11515-JLT

ORDER

November 23, 2010

TAURO, J.

After a Motion Hearing held on November 17, 2010, this court hereby orders that:

1. The Parties shall each file a Memorandum, not to exceed five pages,¹ directed only at answering the following questions:
 - a. Is the issue of whether Plaintiff was paid on or about February 12, 2009 (for his work up to February 12, 2009 as an employee) a material fact that is genuinely in dispute? Explain.
 - b. Does an employee who performs work after being instructed at least once by his employer not to perform work have a claim under the Massachusetts Wage Act? This question calls for the use and explanation of relevant case law.

¹ The Parties may elect to file a Joint Memorandum. Should each Party file their own Memorandum, then each Memorandum is not to exceed five pages. Should the Parties file a Joint Memorandum, the Memorandum is not to exceed ten pages.

c. Exactly what type of work qualifies as (i) work by an employee and, in contrast, exactly what type of work qualifies as (ii) work by a board member or shareholder? Based on relevant case law, explain how each of the five alleged instances of work (that Plaintiff may have performed after February 12, 2009)² qualify as (i) work by an employee, or (ii) work by a board member or shareholder, or both (i) and (ii).

2. The Parties' Memoranda or Joint Memorandum shall be filed by December 17, 2010.

IT IS SO ORDERED.

/s/ Joseph L. Tauro
United States District Judge

² Def. Warren K. Trowbridge's Opp'n Pl. Richard Rosen's Mot. Summ. J. Count I His Compl., 5-11 [#52].